PRIVILEGED AND CONFIDENTIAL
ATTORNEYS' WORK PRODUCT

April 12, 1989

MEMORANDUM

Re: Strategy for Responding to Inquiries Following the Release of a Report by the Department of Health and Human Services on Cigarette Ingredients

Since April 2, 1986, the six major U.S. cigarette manufacturers have submitted four ingredient lists to the Department of Health and Human Services (HHS). These lists, which are regarded as trade secrets, were submitted to HHS pursuant to Section 7 of the Federal Cigarette Labeling and Advertising Act. The Act requires HHS to review the lists submitted to it and to prepare a report to the Congress on any health effects associated with the use of the ingredients.

Before the first list was submitted, a strategy was developed for handling media inquiries about the list and the use of ingredients in cigarettes. A memorandum dated March 27, 1986, describes this initial strategy, which was addressed primarily to possible responses to any unauthorized leaks of the list. In summary, the memorandum called for the channeling of inquiries to Covington & Burling, which has been functioning as counsel for the six major American cigarette manufacturers in connection with the annual preparation and submission of the ingredient lists to HHS. It was felt that this procedure would help prevent confusing and inconsistent statements and maximize the ability of the industry to present

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to the public its position on ingredients in a coherent manner.

Our understanding is that HHS currently is preparing a report on ingredients for release at some point in 1989. The release date, originally announced as the end of 1988, has continued to slip. It now appears that late spring or early summer is the earliest probable date for the appearance of the report. The substantive content of any report by HHS is unknown, but it is possible that the report will criticize the length of the ingredient list, assert an absence of data about the effects of exposure to ingredients as a result of their use in cigarettes, and contend that certain specific ingredients are harmful. The report also could contain a copy of the ingredients list without violating the confidentiality requirements for ingredient information imposed by the Federal Cigarette Labeling and Advertising Act, which exempts the reports to Congress from the confidentiality requirements.

We have requested both orally and in writing that the Office on Smoking and Health, which is responsible for preparing the HHS report, afford an opportunity for our experts to meet with HHS before the report is finalized. Dr. Ronald Davis, the Director of the Office, has informed us that their work is not yet at the point where such a meeting would be in order, but indicated that such a meeting would be held. There remains no certainty, however, that this will occur.

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In light of HHS's planned report, we have reviewed and, where appropriate, revised the previous strategy. Publication of the report almost certainly will generate media attention. In fact, the release of a full report -- particularly if accompanied by claims of adverse health effects for individual ingredients -- may well prompt substantially more publicity than if the ingredient lists had merely been leaked to the press. Moreover, the official nature of the report is likely to enhance the attention given to any adverse comments contained in the report, and it could affect the regulation of ingredients both in the United States and elsewhere.

At the outset, the question of the persons or organizations to be designated to respond on behalf of the industry to media inquiries should be reexamined. If desired, Covington & Burling could continue with the assignment to respond initially on behalf of the industry. This is a feasible approach to the extent that the industry response will make general points and not address detailed scientific issues.

The role of public relations consultants also should be revisited. The initial strategy, reflected in our March 1986 memorandum, was developed with the assistance of John Scanlon and his associates at Daniel J. Edelman, Inc. At that time it was envisaged that, if considerable media interest in the leaked information arose, the Edelman organization would

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screen inquiries and advise on how to handle them. The contemplated procedure was that the first contact with any reporter would be through the Edelman organization, which would determine the reporter's areas of interest and pass this information along to Covington & Burling before it spoke with a reporter directly. The Edelman firm, or other public relations counsel, could be utilized in a similar fashion in the implementation of this revised strategy if the companies desired.

Following release of the report, however, it is likely that some issues will have to be addressed by scientific experts, either those who are employees of individual companies or retained experts.

General Objectives and Tactics

Our hope, of course, is that the release of the report will not receive significant media attention, in which event the industry should do nothing that would stimulate media interest in ingredient issues. However, a highly critical report could generate such strong and widespread adverse media coverage that it may be necessary vigorously to rebut the major criticisms included in the report.

The strategy described below would (1) explain the industry's long history of cooperation with HHS on this issue, (2) emphasize that the evaluation of ingredients is a scientific process that should go forward without disruptive publicity, (3) decline to discuss individual ingredients based

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on trade secret considerations but address criticisms directed to major classes of compounds, such as natural extracts, and (4) emphasize important general points about ingredient usage. If a critical report were released, the industry also would (5) protest its exclusion from the process that produced the report (if that should prove to be the case) and (6) address specific criticisms where it is possible to do so without violating confidentiality requirements.

The specific tactics for achieving these objectives necessarily will depend on the scope and intensity of media reaction to the report by HHS on ingredients. Several different scenarios could unfold, and each is described below.

Scenario I: The Report Is Not Critical and Does Not Include an Ingredients List.

This type of report would probably attract limited media attention. Inquiries would be handled by a brief statement acknowledging the release of the report, and expressing the industry's past cooperation with HHS and its desire to continue to cooperate in the future. This statement could be used as a talking paper during telephone discussions with reporters or released in response to inquiries.

A draft of the statement that would be used by Covington & Burling is enclosed at Tab A. Tabs B and C contain drafts of brief statements that could be used by individual companies and the Tobacco Institute to refer inquiries to Covington & Burling.

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Scenario II: The Report Questions the Use of Ingredients and May Contain the Ingredients List.

Under this scenario, the report might raise a variety of questions, such as the large number of ingredients that are used or the relatively limited amount of publicly-available information on the pyrolysis of ingredients. Such a report probably would generate at least a brief flurry of media interest. The inclusion of the list itself in an otherwise mild report could enhance the level of press interest.

News stories that result from the release of such a report might highlight the length and complexity of the ingredient list, discuss the concerns described in the report with regard to the safety of cigarette ingredients, and discuss a number of specific ingredients. Statements by anti-smoking advocates might be quoted, and these could be fairly specific in nature. Anti-smoking advocates could argue that the report indicates that the companies are putting unknown or dangerous materials into cigarettes.

In these circumstances, we would respond to press inquiries by expressing disappointment about the conclusions reached in the HHS report. If the industry has been excluded from the process that led to the report, we would point that out. We also would (1) note the functions performed by ingredients and the quantities of ingredients present in cigarettes, (2) explain that many cigarette ingredients are

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used in foods and other articles for human consumption, and (3) refute specific criticisms in the report. A draft statement making these points is attached at Tab D. The statement might be released in response to press inquiries or used as a talking paper during telephone discussions.

Scenario III: The Report Is Highly Critical and Generates Sustained and Intense Media Coverage of Ingredients Issues.

This scenario is different from Scenario II only in terms of degree. Under this scenario, an initial flurry of news stories accompanying the release of the report probably would be followed by an extended period of in-depth media interest in ingredients issues. This interest could take a variety of forms, including stories in newspapers and magazines or features on nightly newscasts or weekly news programs such as 60 Minutes.

Considerable attention might be devoted to issues such as the effects of pyrolyzing ingredients, the adequacy of industry testing programs, the asserted need for additional test data, the lack of information as to the ingredients used in individual brands, the desirability of tighter controls on ingredient usage, and ingredient regulations in other countries that are stricter than the requirements in the United States. Attention also could focus on particular ingredients, with questions being raised about the implications of the available data and the possible contribution of specific ingredients to the alleged hazards of cigarette

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smoke. Anti-smoking advocates with scientific credentials might be asked to review the available information on specific ingredients and to comment on possible health issues raised by their use. In addition, companies might be pressed to disclose whether specific ingredients are used in their brands.

In this situation, reliance on a general statement might be inadequate to address media concerns. The industry would have to be prepared to address a wide range of questions and to rebut several allegations. We have attempted to anticipate issues that might arise if intense media interest results from the release of a report on ingredients and to prepare model responses. A draft set of questions and answers is included at Tab E.

Because of the concerns of product liability counsel, we have not included questions and answers on individual ingredients. We have, however, included possible responses relating to certain specific classes of compounds. In addition, if the issue is raised we would be prepared to deny that the six companies use coumarin, cloves, eugenol or other substances that may appear on a composite list that reflects the submissions to HHS of importers and small manufacturers.

The strategy for interacting with the media at this stage would necessarily remain flexible. As noted above, we

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would hope to maintain a low profile, but it may be necessary to take steps to rebut assertions that are unfair or inaccurate. The statement at Tab D contains several statements designed for this purpose. In addition, however, to responding to calls from reporters, it might be appropriate to meet with a small group of media representatives or release a background paper responding to various issues that have been raised. In addition, if a public relations consultant were used initially to return reporters' calls, the consultant could be asked to gauge the extent of the callers' awareness of the relevant issues and on a background basis provide appropriate information.

If scientific issues are raised that Covington & Burling is not able to address, the industry should rely on scientists who could respond to specific questions or make themselves available for interviews with appropriate reporters. It is unclear at the present time who would be the principal scientific spokespersons on ingredients issues. The companies have a number of experts on the use of ingredients, and individuals such as James Charles of Philip Morris or Alex Spears of Lorillard could serve as scientific spokespersons. There is some feeling, however, that non-industry scientists might well be needed, and we are working with a small number of possible candidates to serve as spokespersons.

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Scenario IV: Congressional Hearings Are Held.

Congressional interest in ingredients may be stimulated by media coverage of the HHS report, if not by the report itself. Congressional committees may decide to hold hearings on ingredients. The hearings may address such subjects as HHS's recommendations with respect to ingredients, the safety of particular ingredients, and HHS's conclusions with respect to the adequacy of existing test data. Attention also could be focused on the need for new legislation that might require additional testing, create an ingredient approval procedure, require the disclosure of ingredients on the labels of individual brands or require brand-specific reporting of ingredients to HHS.

Should such hearings occur, it would be necessary to address a variety of scientific, legislative and public relations concerns. While a strategy to deal with these concerns is beyond the scope of this effort, Tab F is a preliminary draft statement for use in Congressional hearings. This statement will require expansion and further work once the ingredient report is released. It should, however, provide guidance as to the kind of expert testimony that would be desirable.

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